

### **REMARKS**

In response to the Final Office Action dated October 12, 2010, Applicant respectfully requests reconsideration. Applicant has not amended the claims. Claims 1, 3–11, 13–22, 24–29, 31–36, 38–43 and 45–47 remain pending.

### **Preliminary Comments**

In the Response to Arguments section, the Examiner indicated that “Applicant’s arguments filed 03-18-2010 have been fully considered but they are not persuasive.” Applicant appreciates the Examiner’s articulation of a response to Applicant’s arguments submitted on March 18, 2010. Applicant notes, however, that additional arguments were submitted on August 20, 2010. Accordingly, Applicant respectfully requests clarification as to the status of the arguments filed by Applicant on August 20, 2010 and the status of the arguments contained in the instant response if the claims remain rejected in a subsequent action.

### **Claim Rejections Under 35 U.S.C. § 103**

In the Final Office Action, the Examiner rejected claim(s) 1, 3, 4, 7–11, 13, 16–19, 22, 24, 25, 28, 29, 31–36, 38–41, 43 and 47 under 35 U.S.C. § 103(a) as being obvious by Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al (U.S. Patent No. 6,292,698). The Examiner also rejected claims 5, 6, 14, 15, 26 and 27 under 35 U.S.C. § 103(a) as being unpatentable over Rueter in view of Hatlestad et al. and Duffin et al. and Hwang (U.S. Patent No. 5,920,271). In addition, the Examiner rejected claims 20, 21, 42 and 46 under 35 U.S.C. § 103(a) as being unpatentable over Rueter in view of Hatlestad et al. and Duffin et al. and Webb et al. (U.S. Patent No. 7,060,031), and claim 45 under 35 U.S.C. § 103(a) as being obvious by Rueter in view of Hatlestad et al. and Tamura and Webb et al. (U.S. Patent No. 5,434,611).

Applicant respectfully traverses these rejections. The applied references fail to disclose or suggest the inventions defined by Applicant’s claims, and provide no teaching that would have suggested an apparent reason to arrive at the claimed inventions.

***Claims 1, 3–7, 17–22, 24–29, 31, 32 and 45–47***

Claim 1 recites a method comprising receiving events at a prioritization engine from one or more remote monitors, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients. Claim 1 further recites prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization.

Applicant respectfully submits that the applied references fail to disclose all of the requirements of Applicant's claim 1. As one example, the applied references fail to disclose or suggest *"prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization,"* as recited in Applicant's claim 1.

More specifically, each of the applied references fails to disclose "prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization," as recited in Applicant's claim 1. Moreover, the applied references fail to provide any suggestion that would have rendered it obvious to one of ordinary skill in the art, at the time of Applicant's invention, to arrive at the invention defined by Applicant's claim 1. Accordingly, Applicant submits that claim 1 is patentable in view of Rueter, Hatlestad et al. and Duffin et al.

In support of the rejection, the Examiner asserted that "[o]ne of ordinary skill in the art at the time of the invention would have found it obvious to combine the prioritizing method taught by Rueter with the features of Hatlestad to and the telemetry system for implantable medical devices taught by Duffin to prevent the implanted device from being overworked." Based on this analysis, the Examiner concluded that the invention defined by Applicant's claim 1 would have been obvious to one of ordinary skill in the art at the time of Applicant's invention.

The Examiner's conclusion of obviousness assumes that the Examiner's proposed combination actually produces a method, or a device that performs a method, that includes all of the limitations recited in Applicant's claim 1. If the Examiner's proposed combination does not produce such a device or method, then any finding that the Examiner's proposed combination

would have been obvious to a person of ordinary skill in the art at the time of the invention is not sufficient to support the conclusion that invention defined by Applicant's claim 1 would have been obvious to a person of ordinary skill in the art at the time of the invention.

In the instant case, the Examiner's proposed combination does not include all of the limitations recited in Applicant's claim 1. For example, the Examiner's proposed combination does not appear to include "receiving events at a prioritization engine from one or more remote monitors," as recited in Applicant's claim 1. For at least this reason, the Examiner has failed to establish a prima facie case of obviousness with respect to Applicant's claim 1.

More specifically, with respect to the "receiving events at a prioritization engine from one or more remote monitors" feature of Applicant's claim 1, the Examiner acknowledged that "Rueter does not teach . . . receiving the events from a remote monitor." Thus, the Examiner appears to have acknowledged that Rueter does not disclose "receiving events at a prioritization engine from one or more remote monitors," as recited in Applicant's claim 1. Moreover, the Examiner did not identify any other teaching within Hatlestad et al. or Duffin et al. that the Examiner used in the Examiner's proposed combination to correspond to the "receiving events at a prioritization engine from one or more remote monitors" feature of Applicant's claim 1. Therefore, according to the evidence on record, the Examiner's proposed combination does not include "receiving events at a prioritization engine from one or more remote monitors" as recited in Applicant's claim 1.

Moreover, because the Examiner's proposed combination does not include "receiving events at a prioritization engine from one or more remote monitors," the Examiner's proposed combination also does not include any limitation of Applicant's claim 1 that relates back to the received events. For example, the Examiner's proposed combination does not include "prioritizing, with the prioritization engine, the received events," as recited in claim 1 (emphasis added).

In addition, because the Examiner's proposed combination does not include "prioritizing, with the prioritization engine, the received events," the Examiner's proposed combination also does not include any limitation of Applicant's claim 1 that relates back to the prioritization. For example, the Examiner's proposed combination does not include "presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization," as recited in Applicant's claim 1 (emphasis added).

If the Examiner's proposed combination does not produce a method or device that includes all of the features of Applicant's claim 1, then any assertion that the Examiner's proposed combination would have been obvious to one of ordinary skill in the art at the time of Applicant's invention is not sufficient for establishing that the invention defined by Applicant's claim 1 would have been obvious to one of ordinary skill in the art at the time of Applicant's invention. For at least the reasons discussed above, the Examiner's proposed combination does not include all of the features of Applicant's claim 1. Accordingly, the Examiner has not established a prima facie case of obviousness with respect to Applicant's claim 1.

In addition, Applicant maintains the arguments presented in Applicant's previous responses of March 18, 2010 and August 20, 2010. In the response filed by Applicant on March 18, 2010, Applicant provided the following arguments:

In support of the rejection of Applicant's claim 1, the Examiner acknowledged that Rueter in view of Hatlestad et al. fails to teach "prioritizing events obtained from a plurality of medical devices implanted in different patients; and presenting a list of the patients and a list of the events for each of the patients based on the prioritization." Therefore, the Examiner appears to have acknowledged that Rueter in view of Hatlestad et al. fails to disclose "prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization," as recited in Applicant's claim 1. In order to overcome this deficiency in Rueter in view of Hatlestad et al., the Examiner turned to Duffin et al.

However, Duffin et al. also fails to disclose "prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization," as recited in Applicant's claim 1. Duffin et al. makes no mention of prioritization of received events. . . . Therefore, Duffin et al. fails to overcome the deficiencies already acknowledged by the Examiner with respect to Rueter in view of Hatlestad et al.

In the Response to Arguments section of the Office Action dated October 12, 2010, the Examiner indicated that this argument was not persuasive. The Examiner provided the following explanation in support of why Applicant's argument was not persuasive:

As shown on column 2 lines 10-17 of Reuter [sic], the implantable device will receive data on clinically significant events/received events. On column 5 lines 65-67 to column 6 lines 1-16 of Reuter [sic], it states that the present invention determines a priority value (prioritization) for the lead impedance.

Hatlestad shows displaying multiple health related parameters including applied therapy (events), device performance, etc (see for example Hatlestad paragraph 103). Duffin teaches on column 14 lines 25–29, a management system for monitoring implanted medical devices that provides data collection to one central site from all study patients (a list of events for each of the patients).

The explanation reproduced above, however, does not provide any additional insight as to why the Examiner considers Duffin et al. to overcome the deficiencies in Rueter in view of Hatlestad et al. More specifically, the Examiner did not identify any teaching in Duffin et al. that would correspond to “prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization,” as recited in Applicant’s claim 1. As such, Applicant respectfully submits that Applicant’s arguments submitted on March 18, 2010 and reproduced above still stand. For at least this reason, Applicant submits that the Examiner has failed to establish a prima facie case of obviousness with respect to Applicant’s claim 1.

As already noted above, the Response to Arguments section in the most recent Office Action did not address the arguments filed by Applicant on August 20, 2010. Accordingly, Applicant hereby incorporates by reference the arguments filed by Applicant on August 20, 2010 into the current remarks.

Independent claims 17 and 29 recite limitations that are similar to those discussed above with respect to independent claim 1. For example, independent claim 17 recites “a prioritization engine to receive events from one or more remote monitors, and to prioritize the received events, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients; and a user interface device to present a list of the patients and a list of the events for each of the patients based on the prioritization.”

As another example, independent claim 29 recites “instructions for causing a programmable processor to . . . receive events from a plurality of remote monitors, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the programmable processor and the remote monitors are both external to the patients;

prioritize the received events; and present a list of the patients and a list of the events for each of the patients based on the prioritization.”

The rejection of independent claims 17 and 29 appears to have relied upon the same rationale as that which was discussed above with respect to independent claim 1. Therefore, Applicant submits that the Examiner has not established a prima facie case of obviousness with respect to claims 17 and 29 for at least reasons similar to those described above with respect to independent claim 1.

Claims 3–7, 18–22, 24–28, 31, 32 and 45–47 depend either directly or indirectly from independent claims 1, 17 and 29. The rejection of these dependent claims incorporated the rationale relied upon for the rejection of independent claims 1, 17 and 29. Moreover, Hwang, Webb et al. and Tamura fail to overcome the deficiencies already discussed above with respect to Rueter in view of Hatlestad et al. and Duffin et al. Therefore, the Examiner has not established a prima facie of obviousness with respect to dependent claims 3–7, 18–22, 24–28, 31, 32 and 45–47 for at least the reasons described above with respect to claims 1, 17 and 29. In light of the deficiencies described with respect to the rejection of the independent claims, Applicant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Office Action’s interpretation of, or application of art to, the dependent claims.

For at least these reasons, the Examiner has failed to establish a prima facie case of obviousness under 35 U.S.C. § 103(a) with respect to Applicant’s claims 1, 3–7, 17–22, 24–29, 31, 32 and 45–47. Withdrawal of this rejection is respectfully requested.

***Claims 8–11, 13–16, 33–36 and 38***

Claim 8 recites a method comprising interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data; receiving, with a prioritization engine, the event data from the one or more remote monitors, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event, and wherein the prioritization engine is external to the patients; and assigning, with the prioritization engine, a relative importance to each of the events described by the received event data.

The applied references fail to disclose or suggest “*interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data; receiving, with a prioritization engine, the event data from the one or more remote monitors, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event, and wherein the prioritization engine is external to the patients; and assigning, with the prioritization engine, a relative importance to each of the events described by the received event data,*” as recited in independent claim 8.

More specifically, each of the applied references fails to disclose “*interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data; receiving, with a prioritization engine, the event data from the one or more remote monitors, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event, and wherein the prioritization engine is external to the patients; and assigning, with the prioritization engine, a relative importance to each of the events described by the received event data,*” as recited in Applicant’s claim 8. Moreover, the applied references fail to provide any suggestion that would have rendered it obvious to one of ordinary skill in the art, at the time of Applicant’s invention, to arrive at the invention defined by Applicant’s claim 8. Accordingly, Applicant submits that claim 8 is patentable in view of Rueter, Hatlestad et al. and Duffin et al.

In support of the rejection, the Examiner asserted that “[o]ne of ordinary skill in the art at the time of the invention would have found it obvious to combine the prioritizing method taught by Rueter with the features of Hatlestad to and the telemetry system for implantable medical devices taught by Duffin to prevent the implanted device from being overworked.” Based on this analysis, the Examiner concluded that the invention defined by Applicant’s claim 8 would have been obvious to one of ordinary skill in the art at the time of Applicant’s invention.

The Examiner’s conclusion of obviousness assumes that the Examiner’s proposed combination actually produces a method, or a device that performs a method, that includes all of the limitations recited in Applicant’s claim 8. If the Examiner’s proposed combination does not produce such a device or method, then any finding that the Examiner’s proposed combination would have been obvious to a person of ordinary skill in the art at the time of the invention is not sufficient to support the conclusion that invention defined by Applicant’s claim 8 would have been obvious to a person of ordinary skill in the art at the time of the invention.

In the instant case, the Examiner's proposed combination does not include all of the limitations recited in Applicant's claim 8. For example, the Examiner's proposed combination does not appear to include "interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data," as recited in Applicant's claim 8. For at least this reason, the Examiner has failed to establish a prima facie case of obviousness with respect to Applicant's claim 8.

More specifically, the Examiner did not identify any teaching within Rueter, Hatlestad et al. or Duffin et al. that the Examiner used in the Examiner's proposed combination to correspond to the "interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data" feature of Applicant's claim 8. Therefore, according to the evidence on record, the Examiner's proposed combination does not include "interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data" as recited in Applicant's claim 8.

Moreover, because the Examiner's proposed combination does not include "interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data," the Examiner's proposed combination also does not include any limitation of Applicant's claim 8 that relates back to the event data. For example, the Examiner's proposed combination does not include "receiving, with a prioritization engine, the event data from the one or more remote monitors," as recited in claim 8 (emphasis added).

In addition, because the Examiner's proposed combination does not include "receiving, with a prioritization engine, the event data from the one or more remote monitors," the Examiner's proposed combination also does not include any limitation of Applicant's claim 8 that relates back to the received event data. For example, the Examiner's proposed combination does not include "assigning, with the prioritization engine, a relative importance to each of the events described by the received event data," as recited in Applicant's claim 8 (emphasis added).

If the Examiner's proposed combination does not produce a method or device that includes all of the features of Applicant's claim 8, then any assertion that the Examiner's proposed combination would have been obvious to one of ordinary skill in the art at the time of Applicant's invention is not sufficient for establishing that the invention defined by Applicant's claim 8 would have been obvious to one of ordinary skill in the art at the time of Applicant's invention. For at least the reasons discussed above, the Examiner's proposed combination does



not include all of the features of Applicant's claim 8. Accordingly, the Examiner has not established a prima facie case of obviousness with respect to Applicant's claim 8.

Independent claim 33 recites limitations that are similar to those discussed above with respect to claim 8. For example, independent claim 33 recites "instructions for causing a programmable processor to . . . receive event data from one or more remote monitors, wherein the one or more remote monitors interrogate a plurality of medical devices implanted in different patients to obtain the event data, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event; and assign a relative importance to each event described by the received event data, wherein the programmable processor is external to the patients." The rejection of independent claim 33 appears to have relied upon the same rationale as that which was discussed above with respect to independent claim 8. Therefore, Applicant submits that the Examiner has not established a prima facie case of obviousness with respect to claim 33 for at least reasons similar to those described above with respect to independent claim 8.

Claims 9–11, 13–16, 34–36 and 38 depend either directly or indirectly from independent claims 8 and 33. The rejection of these dependent claims incorporated the rationale relied upon for the rejection of independent claims 8 and 33. Moreover, Hwang does not overcome the deficiencies already discussed above with respect to Rueter in view of Hatlestad et al. and Duffin et al. Therefore, the Examiner has not established a prima facie of obviousness with respect to dependent claims 9–11, 13–16, 34–36 and 38 for at least the reasons described above with respect to claims 8 and 33. In light of the deficiencies described with respect to the rejection of the independent claims, Applicant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Office Action's interpretation of, or application of art to, such claims.

For at least these reasons, the Examiner has failed to establish a prima facie case of obviousness under 35 U.S.C. § 103(a) with respect to Applicant's claims 8–11, 13–16, 33–36 and 38. Withdrawal of this rejection is respectfully requested.

#### *Claims 39–43*

Claim 39 recites a device comprising a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote

monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient; and a database to store the prioritized events.

Applicant submits that the applied references fail to disclose all of the requirements of Applicant's claim 39. As one example, the applied references fail to disclose or suggest *"a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient,"* as recited in Applicant's claim 39.

In support of the rejection of Applicant's claim 39, the Examiner acknowledged that Rueter in view of Hatlestad et al. fails to teach "prioritizing events obtained from a plurality of medical devices implanted in different patients; and presenting a list of the patients and a list of the events for each of the patients based on the prioritization." Therefore, the Examiner appears to have acknowledged that Rueter in view of Hatlestad et al. fails to disclose *"a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient,"* as recited in Applicant's claim 39. In order to overcome this deficiency in Rueter in view of Hatlestad et al., the Examiner turned to Duffin et al.

However, Duffin et al. also fails to disclose *"a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient,"* as recited in Applicant's claim 39. Therefore, Duffin et al. fails to overcome the deficiencies already acknowledged by the Examiner with respect to Rueter in view of Hatlestad et al.

The Examiner appears to have asserted that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to combine the teachings of Rueter in

view of Hatlestad et al. and the teachings of Duffin et al. to arrive at the invention defined by Applicant's claim 39. Applicant respectfully disagrees. The Examiner's proposed combination does not appear to produce a device that includes a "a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient," as recited in claim 39. Accordingly, the Examiner has not established a prima facie case of obviousness with respect to Applicant's claim 39.

Claims 40–43 depend from independent claim 39 and incorporate all of the limitations of independent claim 39. The rejection of these dependent claims incorporated the rationale relied upon for the rejection of independent claim 39. Moreover, Webb et al. does not overcome the deficiencies already discussed above with respect to Rueter in view of Hatlestad et al. and Duffin et al. Therefore, the Examiner has not established a prima facie of obviousness with respect to dependent claims 40, 41 and 43 for at least the reasons described above with respect to claim 8. In light of the deficiencies described with respect to the rejection of the independent claims, Applicant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Office Action's interpretation of, or application of art to, such claims.

For at least these reasons, the Examiner has failed to establish a prima facie case of obviousness under 35 U.S.C. § 103(a) with respect to Applicant's claims 39–43. Withdrawal of this rejection is respectfully requested.

### CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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